

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

June 10, 2020

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ABASI S. BAKER,

Defendant - Appellant.

No. 20-3062
(D.C. No. 2:16-CV-02460-JWL)
(D. Kan.)

ORDER

Before **LUCERO**, Circuit Judge.

Abasi S. Baker is in the custody of the Federal Bureau of Prisons. Proceeding *pro se* in the United States District Court for the District of Kansas, he filed a Motion to Vacate, Set Aside or Correct Sentence Pursuant to 28 U.S.C. § 2255. The district court denied the motion and refused to grant a certificate of appealability (“COA”).

Baker initiated this appeal, in which he filed a *pro se* opening brief and application for a COA. Pursuant to Tenth Circuit Rule 22.1(B), the United States has not yet filed a response brief. In accordance with § 2253(c), a COA is granted as to the following issue:

In light of the contention that Hobbs Act robbery can be accomplished by threatening injury to intangible property, was United States v. Melgar-Cabrera, 892 F.3d 1053, 1064-66 (10th Cir. 2018) (holding that Hobbs Act robbery qualifies as a crime of violence under the elements clause of § 924(c)(3)(A)), wrongly decided because Hobbs Act robbery would not qualify as a crime of violence either categorically under § 924(c)(3)(A) or under § 924(c)(3)(B) after United States v. Davis, 139 S. Ct. 2319, 2336 (2019)?

On April 14, 2020, the district court granted Baker's Motion for Leave to Appeal *In Forma Pauperis*. Accordingly, Baker is financially eligible for the appointment of counsel under 18 U.S.C. § 3006A, and because the interests of justice so require, we appoint the Office of the Federal Public Defender for the District of Colorado ("FPD") to represent Baker in this appeal pursuant to 18 U.S.C. § 3006A(a)(2)(B). Within 14 days of the date of this order, the FPD shall file an entry of appearance in this matter.

Within 60 days of the date of this order, the FPD shall file a supplemental opening brief addressing the issue that has been certified for appeal. The supplemental opening brief shall comply with the Federal Rules of Appellate Procedure and this court's local rules regarding the filing of formal briefs. Within 30 days of service of Baker's supplemental opening brief, the United States shall file a formal response brief. Any optional reply brief shall be filed within 21 days of service of the response brief. Upon completion of briefing, this matter will be set for oral argument. Counsel will be notified of the date and time for argument via separate order issued at a later date.

The record on appeal filed April 15, 2020 is available via CM/ECF and PACER. The FPD and/or counsel for the United States may move to supplement the record on appeal as necessary. No appendix need be filed.

The Clerk shall send a copy of this order to Baker, the FPD, and counsel for the United States.

Entered for the Court

A handwritten signature in black ink, appearing to read 'Christopher M. Wolpert', with a long horizontal stroke extending to the right.

CHRISTOPHER M. WOLPERT, Clerk